

Application No.: 10/849,574  
Amdt dated: June 17, 2009  
Reply to Office action of March 17, 2009

### **REMARKS**

This Amendment is in response to the Office Action of March 17, 2009. Claims 1-7 and 9-16 were considered by the Examiner. In this paper, Claims 1 and 4-6 have been amended, Claim 3 has been canceled, and no new claims have been added. Accordingly, Claims 1-2, 4-7, and 9-16 are presented for further consideration. No new matter has been added in these amendments.

#### **Summary of the Office Action**

In the Office Action, Claims 1-7 and 9-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlson et al. (U.S. Patent No. 5,820,600) in view of Ritchart et al. (U.S. Patent No. 5,209,737). Claims 12-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlson in view of Ritchart further in view of Smith (U.S. Patent No. 7,025,747). For at least the reasons discussed herein, Applicant respectfully traverses these rejections.

#### **The Combination of Carlson and Ritchart Fails to Disclose or Suggest The Seal Recited in Claim 1.**

Claim 1 relates to a seal for laparoscopic port comprising, among other limitations, a base, a multiplicity of jaws, an actuator rotatable to urge the jaws to move between an open position and a closed position, and a diaphragm. The base includes, among other limitations, "a plurality of guides." The jaws are movable radially "along

the plurality of guides." The jaws each comprise "a follower member extending therefrom." The actuator has "a plurality of guideways formed therein," with the follower member of each of the multiplicity of jaws being received in a corresponding one of the plurality of guideways. However, the applied combination of Carlson with Ritchart fails to disclose or suggest all of the recitations of Claim 1, from which Claims 2-11 depend.

Carlson describes an adjustable introducer valve having two valve members and a flexible membrane. (Carlson, col. 5, lines 61-63). The membrane includes an outer edge coupled with one of the valve members. (Carlson, col. 8, lines 29-34). Axial movement of the two valve members relative to each other cause this membrane to stretch or relax thereby changing the area of an aperture formed therein. (Carlson, col. 8, lines 34-49, Figures 2, 3). Carlson also describes holding members for securing an instrument at or near the center of the membrane. (Carlson, col. 9, lines 63-66, Figures 5A, 5B). Carlson indicates that the holding members "may be actuated by movement of ring 50 so that the size of central opening 116 [defined between inner ends of the holding members] corresponds to the size of aperture 62." (Carlson, col. 10, lines 15-18).

Accordingly, Carlson fails to disclose jaw members movable along guides of a base and that have follower members received in a guideway of an actuator, as recited in Claim 1. Rather, Carlson briefly indicates that holding members can be slidable along a "track or groove (not shown)" in the surface of ring 50 and "may be actuated by movement of ring 50." (Carlson, col. 10, lines 9-18). Thus, the holding members of the

Carlson device are positioned on ring 50 and do not interface with both a base and an actuator, as recited with respect to the jaws of Claim 1.

Ritchart relates to a septum valve in a trocar assembly having a variable orifice responsive to a cross-sectional dimension of a surgical instrument being inserted into the trocar. (Ritchart, abstract). The Ritchart device includes a plurality of levers that can each be mounted on a pivot at its proximal end and each engage a septum seal lip at another end. (Ritchart, col. 4, lines 45-69). As a surgical instrument is inserted into the Ritchart device, the levers pivot and expand the lip radially outwardly. (Ritchart, col. 5, lines 10-21).

Thus, Ritchart likewise fails to disclose the deficiencies of Carlson discussed above with respect to Claim 1. For example, Ritchart fails to disclose jaw members movable along guides of a base and that have follower members received in a guideway of an actuator, as recited in Claim 1. Instead, Ritchart describes pivotally mounted levers, as discussed above.

Accordingly, for at least the reasons discussed above, Claim 1 is distinguishable over the applied combination of Carlson and Ritchart. Claims 2, 4-7 and 9-11 depend from Claim 1 and recite additional novel and nonobvious limitations thereon. Claim 3 has been canceled herein. Claims 4-6 have been amended to clarify the definition of subject matter recited therein. Accordingly, Claims 2, 4-7 and 9-11 are distinguishable over Carlson for at least the reasons discussed above with respect to Claim 1.

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**The Asserted Combination of Carlson, Ritchart, and Smith Fails to Disclose or Suggest the Seal Recited in Claims 12-16.**

As noted above, Claims 12-16 were rejected as being unpatentable over Carlson in view of Ritchart, and further in view of Smith. Claims 12-16 depend from Claim 1 and recite additional novel and nonobvious limitations thereon. For at least the reasons discussed above, the combination of Carlson and Ritchart fails to disclose or suggest all of the recitations of Claim 1.

Smith likewise fails to disclose or suggest the deficiencies of Carlson and Ritchart with respect to Claim 1. For example, Smith describes a valve assembly having a diameter reduction structure. The diameter reduction structure includes an assembly of three stand offs 950 and three linking members 971. (Smith, col. 13, lines 27-36). The diameter reduction structure also includes an annular bias member 969 to bias standoffs 950 in a particular direction. (Smith, col. 13, lines 45-54). The standoffs also include a "system of cogs synchronizing the movement of standoffs," although other linking mechanisms are alluded to. (Smith, col. 8, lines 46-53). However, regardless of the linking mechanism, Smith fails to disclose or suggest that the stand offs are movable along guides of a base and that have follower members received in a guideway of an actuator, as recited in Claim 1. Rather, in the Smith devices, diameter reduction structure does not interface with a base or actuator.

Accordingly, for at least the reasons discussed above, the asserted combination of references fails to disclose or suggest all of the recitations of Claim 1, from which

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Claims 12-16 depend. Thus, for at least the reasons that Claim 1 is distinguishable over the applied art, Claims 12-16 are likewise distinguishable over the applied art.

### **Conclusion**

For at least the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowability is most earnestly solicited.

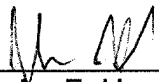
Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

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The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, John F. Heal, at (949) 713-8283 to resolve such issues promptly.

Sincerely

APPLIED MEDICAL RESOURCES

BY   
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